

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

SYLVIA POU O/B/O K. POU

PLAINTIFF

VS.

CIVIL ACTION NO. 4:10-cv-132-CWR-FKB

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL
SECURITY

DEFENDANT

REPORT AND RECOMMENDATION

This cause having come before the Court on Defendant's Motion to Dismiss for Lack of Prosecution [Docket No 21], the Court's subsequent Order to Show Cause [Docket No. 22] and Plaintiff's Response thereto [Docket No. 23], and the Court have considered the Motion, concludes that the Motion is well taken and recommends that it be granted, unless Plaintiff has retained an attorney and filed a dispositive motion by October 1, 2011.

On April 1, 2011, Plaintiff's initial attorney was granted conditional leave to withdraw as counsel. [Docket No. 19]. Plaintiff was ordered to either have new counsel appear by May 2, 2011, or be deemed to be proceeding *pro se*. She was also ordered to file a dispositive motion by May 9, 2011. Plaintiff's initial attorney met the conditions for withdrawal imposed by the Court, as demonstrated by Docket No. 20, filed April 23, 2011.

No new attorney entered an appearance on behalf of Plaintiff nor was any dispositive motion filed. On May 10, 2011, Defendant filed a Motion to Dismiss for Lack of Prosecution. Plaintiff did not respond to the Motion. On June 28, 2011, the Court ordered Plaintiff to show cause for her failure to have an attorney appear or file a dispositive motion herself. Plaintiff, pro se, filed a Response on July 15, 2011, claiming her medical condition has prevented her from seeking advice, but also arguing that she did not give her prior attorney permission to withdraw.

Plaintiff requested more time to retain another attorney. The Court does not consider Plaintiff's Response to the Show Cause Order adequate, however, because the suit concerns a claim on behalf of a minor child, the undersigned recommends that the Motion to Dismiss be granted without further notice unless a new attorney for Plaintiff has entered an appearance and filed a dispositive motion by October 1, 2011.

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within ten (10) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. §636, Douglass v. United Services Automobile Association, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Respectfully submitted, this the 28th day of July, 2011.

s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE